

Before the
Federal Communications Commission
Washington, DC 20554

FCC 19M-01

In the Matter of)	MB Docket No. 17-179
)	
Applications of Tribune Media Company)	
(Transferor))	
)	
and)	
)	
Sinclair Broadcast Group, Inc.)	File No. BTCCDT-20170626AGW, <i>et al.</i>
(Transferee))	
)	
For Transfer of Control of Tribune Media)	
Company and Certain Subsidiaries,)	
WDCW (TV), <i>et al.</i>)	
)	
and)	
)	
For Assignment of Certain Licenses from)	
Tribune Media Company and Certain)	
Subsidiaries)	

ORDER

Issued: March 5, 2019

Released: March 5, 2019

On June 28, 2017, Sinclair Broadcast Group, Inc. (Sinclair) and Tribune Media Company (Tribune) filed the above-captioned applications seeking to transfer control of Tribune subsidiaries to Sinclair.¹ The record, however, contained substantial and material questions of fact that rendered the

¹ The applications filed to effectuate the transfer of control of Tribune to Sinclair are as follows: BTCCDT-20170626AGW; BTCCDT-20170626AGH; BTCCDT-20170626AGL; BTCCDT-20170626AGO; BTCCDT-20170626AFZ; BTCCDT-20170626AGA; BTCCDT-20170626AGB; BTCCDT-20170626AGC; BTCCDT-20170626AFH; BTCCDT-20170626AFI; BTCCDT-20170626AFP; BTCCDT-20170626AFO; BTCCDT-20170626AFN; BTCCDT-20170626AFM; BTCCDT-20170626AFL; BTCCDT-20170626AFK; BTCCDT-20170626AFJ; BTCCDT-20170626AFT; BTCCDT-20170626AFY; BTCCDT-20170626AGF; BTCCDT-20170626AGP; BTCCDT-20170626AGI; BTCCDT-20170626AGN; BTCCDT-20170626AGM; BTCCDT-20170626ADY; BTCCDT-20170626ADZ; BTCCDT-20170626AFR; BTCCDT-20170626AFS; BTCCDT-20170626AFU; BTCCDT-20170626AFV; BTCCDT-20170626AFW; BTCCDT-20170626AEM; BTCCDT-20170626AFF; BTCCDT-20170626AFE; BTCCDT-20170626AFD; BTCCDT-20170626AFC; BTCCDT-20170626AFB; BTCCDT-20170626AFA; BTCCDT-20170626AEZ; BTCCDT-20170626AEY; BTCCDT-20170626AEX; BTCCDT-20170626AEW; BTCCDT-20170626AEV; BTCCDT-20170626AEU; BTCCDT-20170626AET; BTCCDT-20170626AES; BTCCDT-20170626AER; BTCCDT-20170626AEQ; BTCCDT-20170626AEP; BTCCDT-20170626AEO; BTCCDT-20170626AEN; BTCCDT-20170626AEL; BTCCDT-20170626AGQ; BTCCDT-20170626AGR; BTCCDT-20170626AGS; BTCCDT-20170626AGT; BTCCDT-20170626AGU; BTCCDT-20170626AGV; BTCCDT-20170626AGX; BTCCDT-20170626AEF; BTCCDT-20170626AEE; BTCCDT-20170626AFQ; BTCCDT-20170626AGJ; BTCCDT-20170626AEG; BTCCDT-20170626AGD; BTCCDT-20170626AGE; BTCCDT-20170626AEA; BTCCDT-20170626AEB; BTCCDT-

Commission unable to make the finding required by the Communications Act that grant of the applications would be consistent with the public interest, convenience, and necessity.² Accordingly, on July 19, 2018, the Commission designated the applications for hearing “to determine whether the above-captioned applications should be granted or denied.”³

On August 9, 2018, Sinclair notified the Commission of the dissolution of its underlying agreement with Tribune and the withdrawal of the subject applications, to be dismissed with prejudice, and requested termination of this hearing proceeding.⁴ On August 10, 2018, the Enforcement Bureau filed a response indicating that it does not oppose dismissal of the designated applications and termination of the hearing proceeding.⁵ The *Hearing Designation Order* afforded a number of additional entities party status; none filed a responsive pleading.⁶

Discussion

In the *Hearing Designation Order*, the Commission delineated four issues to be considered by the Presiding Judge:

- (a) Whether, in light of the issues presented [in the *Hearing Designation Order*], Sinclair was the real party-in-interest to the WGN-TV, KDAF, and KIAH applications, and, if so, whether Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission;
- (b) Whether consummation of the overall transaction would violate Section 73.3555 of the Commission’s rules, the broadcast ownership rules;

20170626AFG; BTCCDT-20170626AGK; BTCCDT-20170626AGG; BTCCDT-20170626AFX; BTCCDT-20170626AEK; BTCCDT-20170626ADX; BTCCDT-20170626AED; BTCCDT-20170626AGY; BTCCDT-20170626AEC; BTCCDT-20170626AEH; BTCCDT-20170626AEJ; and BTCCDT-20170626AEI.

² See 47 U.S.C. § 310(d) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby”); 47 U.S.C. § 309(d)(2) (“If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with [the public interest, convenience, and necessity],” it must formally designate the application for a hearing pursuant to 47 U.S.C. § 309(e)).

³ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee)*, MB Docket No. 17-179, Hearing Designation Order, 33 FCC Rcd 6830, 6831, para. 3 (2018) (*Hearing Designation Order*).

⁴ Sinclair Broadcast Group, Inc., Notice of Withdrawal of Applications and Motion to Terminate Hearing, MB Docket No. 17-179 (filed Aug. 9, 2018), <https://ecfsapi.fcc.gov/file/10809224250794/Sinclair%20Notice%20of%20Withdrawal%20and%20Motion%20to%20Terminate.pdf>. In a concurrently-filed letter to the Secretary of the Commission that is appended to that pleading, Sinclair appears to erroneously intend to request that the Media Bureau dismiss the applications rather than the Presiding Judge. That request is instead resolved in this Order.

⁵ Enforcement Bureau’s Response to Notice of Withdrawal of Applications and Motion to Terminate Hearing, MB Docket No. 17-179 (filed Aug. 10, 2018), <https://ecfsapi.fcc.gov/file/1081074748667/8.10.18.EB%20Response%20to%20Motion%20to%20Terminate.pdf>.

⁶ *Hearing Designation Order*, 33 FCC Rcd at 6841, para. 32. Oppositions were due to be filed by August 20, 2018, per 47 CFR. § 1.45(b).

(c) Whether, in light of the evidence adduced on the issues presented, grant of the above-captioned applications would serve the public interest, convenience, and/or necessity, as required by Section 309(a) and 310(d) of the Act; and

(d) Whether, in light of the evidence adduced on the issues presented, the above-captioned applications should be granted or denied.⁷

Issues (b), (c), and (d) relate to the proposed underlying transaction and the propriety of granting the pending applications. Because those issues involve a transaction that has been dissolved and applications that are no longer being pursued, issues (b), (c), and (d) are effectively moot. The licenses at issue are now the subject of a set of applications that would ultimately transfer them from Tribune subsidiaries to a third party,⁸ and the Media Bureau has granted waiver of the Commission's inconsistent application rule, 47 CFR § 73.3518, to allow for filing of those applications.⁹

Issue (a), however, does not rely on the continued pendency of the proposed transaction and the related applications. Rather, that issue concerns whether Sinclair's conduct before the Commission in furtherance of that transaction involved misrepresentation and/or lack of candor. Inherent in that line of inquiry is whether Sinclair, the licensee of multiple broadcast stations, possesses the requisite character qualifications to be a Commission licensee.

Honesty with the Commission is a foundational requirement for a Commission licensee.¹⁰ Section 1.17 of the Commission's rules mandates that FCC licensees deal truthfully with the agency, not only by refraining from misrepresenting information but also by not omitting "material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading."¹¹ The Commission has repeatedly emphasized to licensees that "[f]ull and clear disclosure of all material facts in every application is essential to the efficient administration of the Commission's licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide."¹² The courts have recognized that "[t]he FCC

⁷ *Hearing Designation Order*, 33 FCC Rcd at 6840, para. 29.

⁸ *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to Nexstar Media Group, Inc.*, MB Docket No. 19-30, Public Notice, DA 19-82, 2019 WL 655115 (MB Feb. 14, 2019). While Sinclair is the focus of the allegations raised in the *Hearing Designation Order*, the underlying licenses are held by Tribune.

⁹ *Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), Consolidated Applications for Consent to Transfer Control*, MB Docket No. 19-30, Order, DA 19-81, 2019 WL 655114 (MB Feb. 14, 2019).

¹⁰ *Policy Regarding Character Qualifications in Broadcast Licensing*, Gen. Docket No. 81-500, Report, Order and Policy Statement, 102 F.C.C.2d 1179, 1211, para. 61 (1986) (*1986 Character Policy Statement*) ("The integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees"); *Policy Regarding Character Qualifications in Broadcast Licensing*, Gen. Docket No. 81-500, Notice of Inquiry, 87 F.C.C.2d 836, 846, para. 23 (1981) ("The Commission's scheme of regulations rests upon the assumption that applicants will supply it with accurate information").

¹¹ 47 CFR § 1.17.

¹² *Fox Television Stations, Inc.*, MB Docket No. 07-260, Memorandum Opinion and Order, 33 FCC Rcd 7221, 7239, para. 42 (2018); *Ministerios El Jordan*, EB Docket No. 18-239, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, DA 18-834, para. 13, 2018 WL 5004795 (EB Oct. 11, 2018); *Metro Two-Way LLC*, WTB Docket No. 18-133, Order to Show Cause, Hearing Designation Order and Notice of Opportunity

relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”¹³ Indeed, providing false statements to the Commission has been a basis for license revocation since the inception of the Communications Act in 1934.¹⁴

The *Hearing Designation Order* alleges that Sinclair may have misled the Commission in the course of its attempted acquisition of Tribune by misrepresenting and/or omitting material facts relevant to whether Sinclair was the real party in interest to which some of Tribune’s licenses would be transferred. This alleged deception was ostensibly aimed at allowing Sinclair to bypass the Commission’s multiple ownership limitations.¹⁵ Allegations that Sinclair engaged in misrepresentation and/or lacked candor before the Commission are extremely serious charges that reasonably warrant a thorough examination, notwithstanding the decision to discontinue the transaction and withdraw the pending applications. As the Commission pointed out in the *Hearing Designation Order*, “a real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.”¹⁶ So, too, are issues involving misrepresentation and lack of candor.¹⁷

Nonetheless, the dissolution of the Sinclair/Tribune consolidation is a circumstance that would render a hearing at this time in the context of this proceeding an academic exercise. The basic character-related allegations specified against Sinclair in the *Hearing Designation Order* are untethered to any active application to which Sinclair is a party. The licenses at issue are now part of an unrelated proposed transaction not involving Sinclair. That is not to say that Sinclair’s alleged misconduct is nullified or excused by the cancellation of its proposed deal with Tribune. Certainly, the behavior of a multiple-station owner before the Commission “may be so fundamental to a licensee’s operation that it is relevant to its qualifications to hold any station license.”¹⁸ That broad inquiry, however, would be more appropriately considered in the context of a future proceeding in which Sinclair is seeking Commission approval, for example, involving an application for a license assignment, transfer, or renewal. At that time, it may be determined that an examination of the misrepresentation and/or lack of candor allegations raised in this proceeding is warranted as part of a more general assessment of Sinclair’s basic character qualifications to be a Commission licensee. Absent a specific transaction or other proceeding to provide context for this unresolved character issue, however, conducting a hearing at this time would not be a

for Hearing, 33 FCC Rcd 4526, 4529-30, para. 9 (WTB-MD 2018); *Cumulus Licensing LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13711, 13716, para. 13 (MB-AD 2007); *Rancho Palos Verdes Broadcasters, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 5043, 5055, para. 35 (MB 2003); *WRKL Rockland Radio, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 14 FCC Rcd 1042, 1044, para. 7 (MMB 1999).

¹³ *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (citing *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454 (D.C. Cir. 1980)).

¹⁴ 47 U.S.C. § 312(a)(1). See also Federal Radio Act of 1927, 44 Stat. 1162, Section 14.

¹⁵ 47 CFR § 73.3555, note 2.

¹⁶ *Hearing Designation Order*, 33 FCC Rcd at 6831 n.5, 6834, para. 15, 6835 n.42 (quoting *Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520, 6534-35, para. 36 (2011)).

¹⁷ See *Fox River Broadcasting, Inc.*, BC Docket No. 80-310, Order, 93 F.C.C.2d 127, 129, para. 6 (1983) (“[B]oth misrepresentation and lack of candor represent deceit”).

¹⁸ *1986 Character Policy Statement*, 102 F.C.C.2d at 1223, para. 92.

prudent use of Commission time and resources. Accordingly, Sinclair's request to dismiss the above-captioned applications and terminate this hearing proceeding is granted.

Ordering Clauses

IT IS ORDERED that Administrative Law Judge Jane Halprin shall serve as Presiding Judge in the above-entitled proceeding.

IT IS FURTHER ORDERED that the above-captioned applications are dismissed with prejudice.

IT IS FURTHER ORDERED that Sinclair's unopposed motion is granted and this hearing proceeding is terminated.

SO ORDERED.¹⁹

FEDERAL COMMUNICATIONS COMMISSION



Jane Halprin
Administrative Law Judge

¹⁹ A copy of this Order will be sent via U.S. mail to Sinclair, Tribune, the Enforcement Bureau, and the parties listed in the *Hearing Designation Order* at paragraph 38.